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 CENTRAL INTELLIGENCE AGENCY  
 WASHINGTON, D.C. 20505

22 MAR 1976

Mr. James M. Frey  
 Assistant Director for Legislative Reference  
 Office of Management and Budget  
 Washington, D.C. 20503

Dear Mr. Frey:

Enclosed is a proposed report to Chairman Rodino, House Committee on the Judiciary, on H.R. 12048, a bill "Amending title 5 of the United States Code to improve agency rule making by expanding the opportunities for public participation, by creating procedures for congressional review of agency rules, and by expanding judicial review, and for other purposes."

Advice is requested as to whether there is any objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

FIELD

George L. Cary  
 Legislative Counsel

Enclosure

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CENTRAL INTELLIGENCE AGENCY

WASHINGTON, D.C. 20505

Honorable Peter W. Rodino, Jr., Chairman  
Committee on the Judiciary  
House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing to offer our views on H.R. 12048, a bill "Amending Title 5 of the United States Code to improve agency rulemaking by expanding the opportunities for public participation, by creating procedures for congressional review of agency rules, and by expanding judicial review, and for other purposes."

Subsections (b) through (e) of section 553 of the Administrative Procedure Act establish certain procedures to be followed by Federal agencies in rulemaking. These procedures include advance public notice of rulemaking, opportunity to submit views, and delayed effectiveness of rules. Subsection (a) of section 553 makes these procedures inapplicable "to the extent that there is involved a military or foreign affairs function of the United States." H.R. 12048 would amend subsection (a) and exempt instead "a matter pertaining to a military or foreign affairs function of the United States that is (A) specifically authorized under criteria established by Executive order to be kept secret in the interest of the national defense or foreign policy and (B) is in fact properly classified pursuant to such Executive order."

The foreign intelligence responsibilities performed by the Central Intelligence Agency are fully excluded from the requirements of section 553 because they fall within the existing general exemption for military or foreign affairs functions. It is our position that foreign intelligence functions should continue to be generally excluded from public rulemaking procedures, and for this reason we are opposed to narrowing the existing exemption, as proposed in H.R. 12048.

The existing exemption fully protects sensitive intelligence matters from public disclosure and, therefore, achieves society's interest in preserving the secrecy of certain foreign intelligence activities. This would not necessarily be accomplished under the exemption proposed in H.R. 12048 as the responsibilities for the Director of Central Intelligence to protect intelligence sources and methods from unauthorized disclosure are an explicit statutory direction and are not based upon Executive order.



There are two additional considerations which militate against removing the exemption from public rulemaking procedures for the foreign intelligence function. The first consideration involves the interest of conducting the Government's business efficiently and expeditiously. In the foreign intelligence area, society's interest in public participation is slight. The Central Intelligence Agency is not engaged in economic, social or other kinds of regulation which affect the public; nor is it a policy making agency in the field of foreign relations. The Agency was established under the National Security Act of 1947 to correlate and evaluate foreign intelligence and to perform other intelligence-related duties at the direction of the National Security Council. Rules involving foreign intelligence functions have such a minimal public impact, if any, that the public's interest would be best served by preserving the crucial exemption from the rulemaking procedures function. The second consideration involves the constitutionality of imposing procedural requirements on the performance of certain duties committed to the office of the President. It is believed that the foreign intelligence function lies within this constitutional zone.

For the foregoing reasons, this Agency opposes favorable consideration of H.R. 12048 in its present form.

The Office of Management and Budget has advised there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

George L. Cary  
Legislative Counsel